



Department of Justice  
Canada

Ministère de la Justice  
Canada

FOR INFORMATION

NUMERO DU DOSSIER/FILE #: 2016-015739

COTE DE SÉCURITÉ/SECURITY CLASSIFICATION: Protected B

**TITRE/TITLE: Supreme Court of Canada Decisions *R. v. Jordan* and *R. v. Williamson***

**SOMMAIRE EXÉCUTIF/EXECUTIVE SUMMARY**

- This note provides an overview of the Supreme Court of Canada (SCC) decisions in *R. v. Jordan* and *R. v. Williamson* and their potential impact.
- In *Jordan*, the majority decision (the court split 5/4) created a new framework for determining unreasonable delay under paragraph 11(b) of the *Canadian Charter of Rights and Freedoms*. It set presumptive ceilings on the time it should take to bring an accused person to trial: 18 months for cases proceeding to trial in provincial court, and 30 months in superior court. It also provided a transitional, contextual approach for cases currently in the system.
- The minority was highly critical of the departure from the case-specific framework (established in the SCC case *R. v. Morin* in 1992), finding the new presumptive ceilings “wrong in principle and unwise in practice”. It cautioned that the new framework could lead to the staying of thousands of charges.

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2016-015739

## MEMORANDUM FOR THE MINISTER

### Supreme Court of Canada Decisions *R. v. Jordan* and *R. v. Williamson*

#### ISSUE

This note provides an overview of the Supreme Court of Canada (SCC) decisions in *R. v. Jordan* and *R. v. Williamson* and their potential impact.

#### BACKGROUND

The SCC companion decisions in *Jordan* and *Williamson* were handed down on July 8, 2016, and are attached as Annexes 1 and 2 respectively.

In *Jordan*, the majority decision (written by Justices Moldaver, Karakatsanis, and Brown, and agreed to by Justices Abella and Côté) revised the analysis for unreasonable delay under paragraph 11(b) of the *Canadian Charter of Rights and Freedoms* (right to be “tried within a reasonable time”) departing from the well-established framework for case-specific analysis set out by the SCC in *R. v. Morin*, 1992. The majority sets out presumptive numerical ceilings on the time it should take to bring an accused person to trial: 18 months for cases proceeding to trial in provincial court, and 30 months in superior court (or in provincial court with a preliminary inquiry). The court held that the ceilings were necessary to simplify the analysis, “foster incentives” and to combat “complacency” on the part of all players in the criminal justice system.

Should a trial proceed beyond these ceilings, the delay is presumed to be unreasonable and a stay will follow unless the Crown establishes “exceptional circumstances” (discrete events beyond the control of the Crown that are unforeseeable and cannot be remedied, which includes the inherent complexity of a case). For cases below the ceilings, the burden will be on the defence to establish unreasonable delay.

The court allowed a contextual application of the new framework for cases currently in the system to avoid a post-*Askov*<sup>1</sup> situation where thousands of charges were stayed due to the abrupt change in the law.

Applying the new framework to the facts in *Jordan*, the court found that that a 49.5 month delay between drug possession and trafficking charges being laid and Mr. Jordan’s trial in a British Columbia Superior Court was unreasonable contrary to paragraph 11(b) of the Charter. The Court set aside the accused’s convictions, and directed a stay of proceedings.

The minority (Cromwell J., writing with McLachlin C.J., Wagner and Gascon JJ) was highly critical of the departure from the *Morin* case-specific framework, finding the presumptive

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<sup>1</sup> In *R v. Askov* (1990), the SCC first established the criteria for a section 11(b) violation. The Supreme Court revisited and revised the test for unreasonable delay in *R. v. Morin*.

ceilings “wrong in principle and unwise in practice”, unsupported by the record before the court and a matter for Parliament and not the courts to establish. The minority retained the *Morin* framework but provided a “reorientation” and clarification of the analysis. The minority cautioned that the new framework may lead to the staying of thousands of charges.

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\_\_\_\_\_ and a list of the evidence and data presented by the parties to the SCC (taken from their respective pleadings) are attached as Annexes 3 and 4 respectively.

In the companion case *Williamson*, the majority (Abella, Moldaver, Karakatsanis, Côté and Brown JJ.) applied the new *Jordan* framework to a case of historical sexual assault tried in the Ontario Superior Court. It found that the total delay of 35.5 months infringed the accused’s right to be tried within a reasonable time under paragraph 11(b) of the Charter. The majority also found the delay unreasonable under the transitional, exceptional circumstances assessment. McLachlin C.J. concurred in the result, but applied the minority’s revised *Morin* framework as set out in *Jordan*. In dissent, Cromwell, Gascon and Wagner JJ., applying the revised *Morin* framework, would have found the delay reasonable under the circumstances, including the seriousness of the charges at issue.

#### CONSIDERATIONS



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## CONCLUSION



ANNEXES

Annex 1: *R. v. Jordan*  
Annex 2: *R. v. Williamson*  
Annex 3: [REDACTED]  
Annex 4: Evidence before the Court in *R. v. Jordan*  
Annex 5: [REDACTED]

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**SUPREME COURT OF CANADA**

**CITATION:** R. v. Jordan, 2016 SCC 27

**APPEAL HEARD:** October 7, 2015

**JUDGMENT RENDERED:** July 8, 2016

**DOCKET:** 36068

**BETWEEN:**

**Barrett Richard Jordan**  
Appellant

and

**Her Majesty the Queen**  
Respondent

- and -

**Attorney General of Alberta,  
British Columbia Civil Liberties Association and  
Criminal Lawyers' Association (Ontario)**  
Intervenors

**CORAM:** McLachlin C.J. and Abella, Cromwell, Moldaver, Karakatsanis, Wagner,  
Gascon, Côté and Brown JJ.

**JOINT REASONS FOR JUDGMENT:**  
(paras. 1 to 141)

Moldaver, Karakatsanis and Brown JJ. (Abella and  
Côté JJ. concurring)

**REASONS CONCURRING IN THE RESULT:**  
(paras. 142 to 303)

Cromwell J. (McLachlin C.J. and Wagner and  
Gascon JJ. concurring)

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**SUPREME COURT OF CANADA**

**CITATION:** R. v. Williamson, 2016 SCC 28

**APPEAL HEARD:** October 7, 2015

**JUDGMENT RENDERED:** July 8, 2016

**DOCKET:** 36112

**BETWEEN:**

**Her Majesty the Queen**  
Appellant

and

**Kenneth Gavin Williamson**  
Respondent

• - and -

**Attorney General of Alberta,  
British Columbia Civil Liberties Association and  
Criminal Lawyers' Association (Ontario)**  
Interveners

**CORAM:** McLachlin C.J. and Abella, Cromwell, Moldaver, Karakatsanis, Wagner,  
Gascon, Côté and Brown JJ.

**JOINT REASONS FOR JUDGMENT:**  
(paras. 1 to 39)

Moldaver, Karakatsanis and Brown JJ. (Abella and  
Côté JJ. concurring)

**REASONS CONCURRING IN THE RESULT:** McLachlin C.J.  
(paras. 40 to 42)

**DISSENTING REASONS:**  
(paras. 43 to 86)

Cromwell J. (Wagner and Gascon JJ. concurring)

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## Annex 4: Evidence Before the Supreme Court of Canada

### Re. Delay in *R. v. Jordan* 2016 SCC 27

The materials submitted to the SCC included reports concerning delay issues in specific jurisdictions (e.g., reports from provincial governments and courts tracking local/regional delay), as well as more general statistics and previous comprehensive studies of the issue (e.g., the 2008 Lesage-Code report regarding large and complex criminal cases, the 2006 report of the Steering Committee on Justice Efficiencies, etc.).

The parties also submitted reported trial-level decisions describing local delay conditions and/or common reasons for delay (e.g., lack of judges, scheduling practices, insufficient screening or narrowing of issues by counsel, last-minute cancellations of scheduled trials, etc.)

While these materials formed a significant record, the minority was nonetheless concerned that there was not comprehensive national statistical evidence before the court to justify the majority's decision to fundamentally change the paragraph 11(b) framework.

#### Reports and Studies:

Report	Party/Interven or	Link:
Provincial Court of British Columbia, <i>The Semi-Annual Time to Trial Report of the Provincial Court of British Columbia to March 31, 2015</i> (2015)	Attorney General of Alberta	<a href="http://www.provincialcourt.bc.ca/downloads/pdf/Time%20to%20Trial%20-%20Update%20(as%20at%20March%2031,%202015).pdf">http://www.provincialcourt.bc.ca/downloads/pdf/Time%20to%20Trial%20-%20Update%20(as%20at%20March%2031,%202015).pdf</a>
Alberta Justice and Solicitor General, <i>Injecting a Sense of Urgency: A New Approach to Delivering Justice in Serious and Violent Criminal Cases</i> (2013, updated 2014)	Attorney General of Alberta, BCCLA	<a href="https://justice.alberta.ca/programs_services/criminal_pros/Documents/InjectingSenseUrgency.pdf">https://justice.alberta.ca/programs_services/criminal_pros/Documents/InjectingSenseUrgency.pdf</a> [initial]; <a href="https://justice.alberta.ca/programs_services/criminal_pros/Documents/InjectingSenseUrgencyFinalReport_2014-12-01.pdf">https://justice.alberta.ca/programs_services/criminal_pros/Documents/InjectingSenseUrgencyFinalReport_2014-12-01.pdf</a> [final report]
Adrian Humphreys, "The System is Sick: Canada's courts are choking on an increase in evidence," <i>National Post</i> (3 May 2013)	Attorney General of Alberta	<a href="http://news.nationalpost.com/news/canada/canadas-courts-are-choking-on-an-increase-in-evidence">http://news.nationalpost.com/news/canada/canadas-courts-are-choking-on-an-increase-in-evidence</a>
Samuel Perreault, <i>Impaired Driving in Canada, 2011</i> (2013) 33:1 Juristat 1	Criminal Lawyers Association – Ontario	<a href="http://www.statcan.gc.ca/pub/85-002-x/2013001/article/11739-eng.pdf">http://www.statcan.gc.ca/pub/85-002-x/2013001/article/11739-eng.pdf</a>
Provincial Court of British Columbia, <i>Justice Delayed: A Report on the Provincial Court of British Columbia Concerning Judicial Resources</i> (2010)	Appellant, Attorney General of	<a href="http://bcgeu.bc.ca/sites/default/files/Justice_Delayed_-_A_Report_of_the_Provincial_Court_of_British_Columbia_C">http://bcgeu.bc.ca/sites/default/files/Justice_Delayed_-_A_Report_of_the_Provincial_Court_of_British_Columbia_C</a>

	Alberta, BCCLA	<a href="#">oncerning Judicial Resource.p df</a>
Provincial Court of British Columbia, <i>Time to Trial: Updates</i> (2011)	Appellant, Attorney General of Alberta, BCCLA	<a href="http://www.provincialcourt.bc.ca/downloads/pdf/Time%20to%20Trial%20-%20Update%20September%202011.pdf">http://www.provincialcourt.bc.ca/downloads/pdf/Time%20to%20Trial%20-%20Update%20September%202011.pdf</a>
BC Justice Reform Initiative, <i>A Criminal Justice System for the 21<sup>st</sup> Century: Final Report to the Minister of Justice and Attorney General</i> (2012)	BCCLA	<a href="http://www2.gov.bc.ca/assets/gov/law-crime-and-justice/about-bc-justice-system/justice-reform-initiatives/cowperfinalreport.pdf">http://www2.gov.bc.ca/assets/gov/law-crime-and-justice/about-bc-justice-system/justice-reform-initiatives/cowperfinalreport.pdf</a>
Statistics Canada, <i>Adult Criminal Court Statistics, 2008/2009</i> , Jennifer Thomas (Ottawa, Statistics Canada, 2008/2009)	Attorney General of Alberta, Criminal Lawyers Association – Ontario	<a href="http://www.statcan.gc.ca/pub/85-002-x/2010002/article/11293-eng.htm">http://www.statcan.gc.ca/pub/85-002-x/2010002/article/11293-eng.htm</a>
Attorney General of Ontario, <i>Report of the Review of Large and Complex Criminal Case Procedures</i> (2008) (Lesage-Code Report)	Attorney General of Alberta	<a href="http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/lesage_code/">http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/lesage_code/</a>
Michael Code, <i>Law Reform Initiatives Relating to the Megatrial Phenomenon</i> (2008, International Society for the Reform of Criminal Law)	Attorney General of Alberta	N/A
Newfoundland and Labrador, <i>Report of the Task Force on Criminal Justice Efficiencies</i> (2008)	BCCLA	<a href="http://www.justice.gov.nl.ca/just/publications/report_on_criminal_justice_efficiencies.pdf">http://www.justice.gov.nl.ca/just/publications/report_on_criminal_justice_efficiencies.pdf</a>
Bruce McFarlane, <i>Structural Aspects of Terrorist Mega-Trials: A Comparative Analysis</i> (2007)	Attorney General of Alberta	N/A
The Hon. Justice Beverley McLachlin, P.C., <i>The Challenges We Face</i> , Speech delivered at the Empire Club of Canada March 8, 2007	Attorney General of Alberta	<a href="http://speeches.empireclub.org/62973/data?n=1">http://speeches.empireclub.org/62973/data?n=1</a>
Department of Justice of Canada, <i>Final Report on Early Case Consideration of the Steering Committee on Justice Efficiencies and Access to the Justice System</i> (2006)	BCCLA	<a href="http://www.justice.gc.ca/eng/rp-pr/csj-sjc/esc-cde/pdf/ecc-epd.pdf">http://www.justice.gc.ca/eng/rp-pr/csj-sjc/esc-cde/pdf/ecc-epd.pdf</a>
The Hon. Justice Michael Moldaver, <i>Long Criminal Trials: Masters of a</i>	Attorney General of Alberta	N/A

<i>System They Are Meant to Serve</i> (2005) 32 CR (6 <sup>th</sup> ) 316		
Sylvain Tremblay, <i>Impaired Driving in Canada</i> , 1996 (1997) 17:12 Juristat 1	Criminal Lawyers Association – Ontario	<a href="http://publications.gc.ca/Collection-R/Statcan/85-002-XIE/0129785-002-XIE.pdf">http://publications.gc.ca/Collection-R/Statcan/85-002-XIE/0129785-002-XIE.pdf</a>
Canada, Department of Justice, <i>Trial within a Reasonable Time: A Working Paper Prepared for the Law Reform Commission of Canada</i>	Criminal Lawyers Association – Ontario	<a href="http://publications.gc.ca/site/eng/39681/publication.html">http://publications.gc.ca/site/eng/39681/publication.html</a>

**Delay-Related Case Law (regarding practical issues, not the legal framework):**

Decision	Party/Intervenor	Link:
<i>R. v. Ayers</i> 2010 BCPC 86	Appellant	<a href="http://canlii.ca/t/2b62v">http://canlii.ca/t/2b62v</a>
<i>R. v. Blatter</i> 2012 BCPC 35	Appellant	<a href="http://canlii.ca/t/fqclz">http://canlii.ca/t/fqclz</a>
<i>R. v. Brickman</i> 2010 ONCJ 690	Criminal Lawyers Association - Ontario	N/A
<i>R. v. Duszak</i> 2013 ONCJ 586	Criminal Lawyers Association - Ontario	<a href="http://canlii.ca/t/g1w4v">http://canlii.ca/t/g1w4v</a>
<i>R. v. Garcia</i> 2008 CarswellOnt 28	Criminal Lawyers Association - Ontario	N/A
<i>R. v. Ghislieri</i> 2010 BCPC 321	Appellant	<a href="http://canlii.ca/t/2f018">http://canlii.ca/t/2f018</a>
<i>R. v. Hamilton</i> 2010 ONCJ 465	Criminal Lawyers Association - Ontario	<a href="http://canlii.ca/t/2czpg">http://canlii.ca/t/2czpg</a>
<i>R. v. Khoia</i> 2010 CarswellOnt 11270	Criminal Lawyers Association - Ontario	N/A
<i>R. v. Lahiry</i> 2011 ONSC 6780	Attorney General of Alberta	<a href="http://canlii.ca/t/fntws">http://canlii.ca/t/fntws</a>
<i>R. v. Lore</i> 2013 ONCJ 439	Criminal Lawyers Association - Ontario	<a href="http://canlii.ca/t/g01xv">http://canlii.ca/t/g01xv</a>

<i>R. v. Nguyen</i> 2010 ONCJ 116	Criminal Lawyers Association - Ontario	<a href="http://canlii.ca/t/2937z">http://canlii.ca/t/2937z</a>
<i>R. v. McComber</i> 2010 BCPC 255	Appellant	<a href="http://canlii.ca/t/2d3r7">http://canlii.ca/t/2d3r7</a>
<i>R. v. Priddy</i> 2011 BCPC 325	Appellant	<a href="http://canlii.ca/t/fp0zh">http://canlii.ca/t/fp0zh</a>

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## Question Period Note

### RIGHT TO BE TRIED WITHIN A REASONABLE TIME

Supreme Court of Canada (SCC) decisions *R. v. Jordan* and *R. v. Williamson*

#### ISSUE:

Impact of the July 8, 2016, Supreme Court of Canada decisions in *Jordan* and *Williamson* that create a new, numerical framework for determining when an accused's Charter right to be tried within a reasonable time has been infringed.

#### PROPOSED RESPONSE:

- The Supreme Court of Canada decisions in *Jordan* and *Williamson* create a new, numerical framework for assessing when an accused's right to be tried within a reasonable time under the *Canadian Charter of Rights and Freedoms* has been infringed.
- These are complex issues that involve all actors in the criminal justice system and we will take the time needed to carefully review the decisions.
- Ensuring the efficiency and effectiveness of the criminal justice system is a priority for me as well as for my provincial and territorial counterparts who are responsible for the administration of justice.
- We are already working together in support of this priority and I look forward to discussing the Supreme Court's new framework with them as part of this work.
- I am also consulting more broadly with stakeholders and Canadians in support of the Prime Minister's request that I conduct a review of the criminal justice system and sentencing reforms enacted over the past decade.
- These consultations are ongoing.

**BACKGROUND:**

The Supreme Court of Canada (SCC) companion decisions in *Jordan* and *Williamson* were handed down on July 8, 2016.

In *Jordan*, the majority (Karakatsanis, Moldaver and Brown JJ., Abella and Côté JJ concurring) held that a 49.5 month delay between charges being laid and the completion of the trial was unreasonable contrary and to 11(b) of the Charter. The Court set aside the accused's convictions, and directed a stay of proceedings.

The majority in *Jordan* departed from the well-established framework for analysis of unreasonable delay, based mainly in the 1992 SCC decision of *R v Morin*. The Court imposed presumptive numerical ceilings for case completion, i.e. 18 months for cases in provincial court and 30 months in provincial court with a preliminary inquiry, and 30 months for cases in superior court. Beyond these ceilings, the delay is presumed to be unreasonable and must be justified by the Crown (i.e., discrete events beyond its control or that the case was particularly complex). The Court also provided a phased-in transitional implementation approach for cases currently in the system.

The minority (Cromwell J., writing with McLachlin CJ, Wagner and Gascon JJ) was highly critical of the departure from the previous framework.

In *Williamson*, the majority (Abella, Moldaver, Karakatsanis, Côté and Brown JJ.) applied the new framework established in *R v Jordan* and found that the accused's 11(b) Charter right was infringed by a total delay of 35.5 months between laying of charges and conclusion of the trial.

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Note pour la période de questions

**DROIT D'ÊTRE JUGÉ DANS UN DÉLAI RAISONNABLE**

Arrêts de la Cour suprême du Canada (CSC) *R. c. Jordan* et *R. c. Williamson*

**QUESTION :**

Incidence des arrêts *Jordan* et *Williamson*, rendus le 8 juillet 2016 par la Cour suprême du Canada, qui créent un nouveau cadre numérique permettant de déterminer s'il y a eu atteinte au droit de l'accusé d'être jugé dans un délai raisonnable, droit que lui garantit la *Charte*.

**RÉPONSE PROPOSÉE :**

- Les arrêts *Jordan* et *Williamson*, rendus récemment par la Cour suprême du Canada, établissent un nouveau cadre numérique permettant d'évaluer s'il y a eu atteinte au droit de l'accusé d'être jugé dans un délai raisonnable, droit que lui garantit la *Charte canadienne des droits et libertés*.
- Il s'agit de questions complexes qui touchent tous les acteurs du système de justice pénale, et nous prendrons le temps qu'il faut pour examiner attentivement les décisions.
- L'efficacité et l'efficience du système de justice pénale sont une priorité pour moi et pour mes homologues provinciaux et territoriaux qui sont responsables de l'administration de la justice.
- Nous travaillons déjà ensemble à l'appui de cette priorité, et j'ai hâte de discuter avec eux du nouveau cadre établi par la Cour suprême.
- Le premier ministre m'a demandé de procéder à un examen du système de justice pénale et des réformes en matière de détermination de la peine au cours des dix dernières années. Pour ce faire, je mène également des consultations plus vastes auprès des intervenants et de la population canadienne.
- Ces consultations sont en cours.

**BACKGROUND:**

The Supreme Court of Canada (SCC) companion decisions in *Jordan* and *Williamson* were handed down on July 8, 2016.

In *Jordan*, the majority (Karakatsanis, Moldaver and Brown JJ., Abella and Côté JJ concurring) held that a 49.5 month delay between charges being laid and the completion of the trial was unreasonable contrary and to 11(b) of the Charter. The Court set aside the accused's convictions, and directed a stay of proceedings.

The majority in *Jordan* departed from the well-established framework for analysis of unreasonable delay, based mainly in the 1992 SCC decision of *R v Morin*. The Court imposed presumptive numerical ceilings for case completion i.e. 18 months for cases in provincial court and 30 months in provincial court with a preliminary inquiry, and 30 months for cases in superior court. Beyond these ceilings, the delay is presumed to be unreasonable and must be justified by the Crown (i.e., discrete events beyond its control or that the case was particularly complex). The Court also provided a phased-in transitional implementation approach for cases currently in the system.

The minority (Cromwell J., writing with McLachlin CJ, Wagner and Gascon JJ) was highly critical of the departure from the previous framework.

In *Williamson*, the majority (Abella, Moldaver, Karakatsanis, Côté and Brown JJ.) applied the new framework established in *R v Jordan* and found that the accused's 11(b) Charter right was infringed by a total delay of 35.5 months between laying of charges and conclusion of the trial.

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(Discussion)

**R V. JORDAN**

**ISSUE/CONTEXT:**

**STRATEGIC ADVICE:**

**CURRENT STATUS**

The Supreme Court of Canada (SCC) companion decisions in *Jordan* and *Williamson* were handed down on July 8, 2016. The majority in the *Jordan* decision departed from the well-established framework for analysis of unreasonable delay, based mainly in the 1992 SCC decision of *R v. Morin*. The Court imposed presumptive numerical ceilings for case completion (i.e., 18 months for cases in provincial court, 30 months in provincial court with a preliminary inquiry and 30 months for cases in superior court). Beyond these ceilings, the delay is presumed to be unreasonable under section 11(b) of the *Canadian Charter of Rights and Freedoms* and must be justified by the Crown (i.e., discrete events beyond its control or that the case was particularly complex). The Court also provided a phased-in transitional implementation approach for cases currently in the system.

The Department has begun engaging with the provinces and territories to assess and monitor the impact of the decisions.

(Discussion)

**PROVINCIAL/TERRITORIAL CONSIDERATIONS:**



**DESIRED OUTCOME:**

FPT Ministers discussed the impact of the Supreme Court of Canada decision in *R. v. Jordan* in their jurisdictions

**ANNEXES [1]**

Annex 1:

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(Discussion)

## Talking Points

*R v Jordan*

- The Supreme Court of Canada decision in *Jordan* involves many complex issues and affects all actors in the criminal justice system.
- I look forward to working in collaboration with you in developing measures that will ensure a fair, efficient justice system that is consistent with the Charter, and in ensuring the timely resolution of criminal cases.
- The ongoing Criminal Justice System Review will include consideration of data and research with a view to identifying gaps and measures, in addition to the consideration of other reforms to improve case processing.

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s.21(1)(a)

s.21(1)(b)

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(Discussion)

s.13(1)(c)

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- **Our ongoing collaboration is vital in monitoring and assessing the impact of the *Jordan* decision, sharing innovative projects and best practices, as well as exploring measures to ensure the timely resolutions of criminal cases.**

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**13(1)(c), 14**

**of the Access to Information Act  
de la Loi sur l'accès à l'information**